

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Implementation of the Pay)
Telephone Reclassification and)
Compensation Provisions of the)
Telecommunications Act of 1996)

CC Docket No. 96-128

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COMMENTS OF CABLE & WIRELESS, INC.

*Federal Communications Commission
Office of Secretary*

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SUMMARY

Section 276 of the Telecommunications Act of 1996 requires the Commission to adopt a mechanism which ensures that payphone owners are compensated for each and every completed call. While the Commission is free to adopt any reasonable compensation mechanism to accomplish this task, it 1) cannot exempt calls from its regime unless they are already subject to adequate compensation (which the Commission defines as marginal costs) and 2) cannot propose a system which allows payphone owners to receive compensation for calls which are not completed. Remarkably, the Commission's Notice proposes to do exactly these two things. The Notice fails to propose a compensation mechanism for intraLATA 0+/0- calls which are automatically routed to the LECs. Also, the Notice is totally devoid of any standards to be used in determining when a call is completed. This issue is especially relevant for calls placed using calling/travel and prepaid cards. The Commission should clarify that compensation is required only when these calls are answered by the called party, not when they reach the carrier's platform.

Moreover, administration of the mechanism proposed by the Commission would impose significant costs on interexchange carriers, while relieving most other industry participants from these serious burdens. CWI believes that the most efficient administration of a payphone compensation mechanism is a LEC-billed system. Under this system, LECs can bill IXCs for the amount due for payphone compensation under existing billing procedures. A LEC-billed system builds upon existing relationships and billing systems (i.e. between the LEC and the IXC and the LEC and the payphone owner). And,

because the overwhelming majority of payphones are owned by LECs, this system should result in reduced costs for all industry participants.

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COMMENTS OF CABLE & WIRELESS, INC.

Cable & Wireless, Inc. ("CWI"), by its attorney, respectfully submits these comments in response to the Federal Communications Commission's ("Commission") Notice of Proposed Rulemaking in the above-captioned matter.¹

I. INTRODUCTION AND STATEMENT OF INTEREST

CWI is an interexchange carrier which primarily serves business customers throughout the United States. It provides switched and private line data and voice communications, prepaid calling cards, Internet access and basic local exchange service. With revenues of nearly \$750 million in 1995, CWI ranked as the sixth largest domestic interexchange carrier in the nation. The company has experienced double-digit growth for the last five years.

¹ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, FCC 96-254 (released June 6, 1996) (hereinafter "Notice").

In April, 1996, the Commission ruled that CWI was exempt from the obligation to remit compensation to pay service providers based on its finding that CWI does not provide operator services, as defined in Section 226 of the Act.² As stated in CWI's affidavit in support of exemption, while CWI does accept interstate access code calls from payphones, it only accepts such calls where the customer bills the call to an existing account. In short, the company does not accept calls from users who are not current customers.

II. PAYPHONE COMPENSATION

Section 276(b)(1)(A) of the Act requires that all payphone providers be "fairly compensated for each and every completed intrastate and interstate call. . . ."³ The statute does not mandate a particular standard to be used in determining how to fairly compensate payphone service providers ("PSOs"), nor does it dictate who should pay this compensation. Rather, the statute leaves the Commission free to develop the appropriate level and mechanism for compensation. CWI urges the Commission to adopt a system which will result in the lowest transaction costs for all parties, deter fraudulent activity and build upon existing procedures already in place between industry participants.

² 47 U.S.C. §226 (1995).

³ 47 U.S.C. §276(b)(1)(a). The Act exempts emergency calls and telecommunications relay service calls for hearing disabled individuals from compensation.

1. Scope of Calls Covered

[15-18] The Notice identifies five categories of calls that originate from payphones.⁴ The Commission rightly notes that several of these categories can be further divided by the jurisdictional nature of the call -- local, intraLATA toll, intrastate interLATA toll, and interstate interLATA toll. There is no question that all of these calls are included within the plain meaning of the statute, and should be subject to any compensation regime eventually adopted by the Commission.

a. Fair Compensation Currently Exists for Some Calls

[16] The Notice concludes that 0+ calls should be excluded from the Commission's compensation mechanism because private payphone owners ("PPOs") and non-BOC LECs "likely recover the marginal cost of the 0+ call from its payphones" pursuant to contract.⁵ CWI agrees that PPOs and non-BOC LECs already receive fair compensation for these calls, and that compensation need not be prescribed where market forces currently provide adequate compensation.

[22] The Commission also seeks comment on how to categorize intraLATA 0+/0- calls. In some states, these calls must be routed to the incumbent LEC, which may or may not compensate the payphone owner. If the LEC pays a fee for these calls to the payphone owner, then the FCC should assume that PPOs are properly recovering their marginal cost of these calls. If no fees are being paid, then any system eventually adopted by the

⁴ Notice at ¶15.

⁵ Notice at FN 54.

Commission to compensate PPOs must apply to the LEC carrying and receiving revenue for these intraLATA toll calls. Not only is compensation for LEC-carried intraLATA toll calls required under the plain language of the statute, it is required so as to subject LECs to the same charges as an IXC for carrying the same type of calls via an alternative dialing arrangement. Any payphone compensation proposal that does not include compensation for LEC-carried 0+/0- calls would unfairly discriminate against IXCs.

b. Local Coin Calls

[20-22] In the Notice, the Commission asks whether it is appropriate to mandate a nationwide rate for all local calls originated at payphones. In the alternative, the Commission asks whether it should prescribe specific national guidelines that could be used by the states to establish such a local rate. CWI does not believe that either of these actions are appropriate or even necessary. The state public utility commissions (PUC) are in the best position to determine the appropriate compensation level for a purely local coin call. The Commission should defer to the state commissions to determine whether PSOs are being fairly compensated for local coin calls.

c. Subscriber toll-free calls

[23] CWI shares the Commission's concern about the fraudulent use of toll-free calls⁶ to increase a payphone owner's compensation. To protect against fraud, the Commission must clearly state that such a practice is a violation of the Commission's rules and is

⁶ CWI uses the term toll-free to include 800, 888 or any other dialing pattern identified by the Commission in which the called party, rather than the calling party, pays the toll charges associated with the call.

subject to the fines and penalties contained in Section 502 of the Act. Additionally, if a carrier believes, upon examination of its call records, that a fraudulent call pattern is occurring, that carrier should have the right to withhold payment from the PSO until the PSO provides an independent audit of all calls originating from the payphone and a certification that it has inspected the payphone. If the parties are unable to resolve the dispute, then they may jointly appeal to the Commission for assistance.

[23] Requiring the PSO to undertake the inspection and audit is crucial. CWI does not believe a carrier has the legal ability -- even if fraudulent activity is suspected -- to inspect payphone records. To do so is solely the right of the payphone and/or premises owner. Additionally, while each carrier can ascertain which of its calls originated at a particular payphone, only the PSO can obtain call detail for all calls originating from that payphone. Thus, only the payphone owner/premises owner can provide the information necessary to undertake an audit. Therefore, the Commission must ensure that the PSO develops sufficient auditing procedures and will assist a carrier upon reasonable request.

2. Each and Every Completed Call

[29] The statute clearly recognizes that compensation should be paid only for calls which are completed. The Notice, however, is totally devoid of proposed standards to be used in determining when a call is completed for the purposes of applying compensation. This is an important issue which must not be given short shrift. The Commission must make it clear that a call is not completed unless it is actually *answered* by the called party. Providing compensation for calls which are never answered at the terminating point will

result in higher, uneconomic rates for payphone users and an unearned windfall for the PSO.

[29] Call completion issues are specifically relevant to prepaid calling card and other “access” calls. For these services, callers are asked to dial an 800 number, which allows the caller to access a carrier’s platform. Upon reaching the platform, callers are asked to dial a personal identification number (“PIN”) and the terminating telephone number. The carrier’s platform captures information such as the originating and terminating number, call timing/duration and, in the case of prepaid calling cards, actually debits the duration of the call from the amount of time remaining on the card. Most carriers, including CWI, do not charge for calls which are not answered at the final terminating location.

[29] The Commission has addressed issues similar to call completion in the past. Specifically, the Commission recently reviewed the imposition of access charges on calling card services in which a caller first dials an 800 number and, upon reaching the carrier’s platform, dials the terminating number.⁷ The Commission found that these calls constitute only one communication.

[These] services convey a single communication from the caller to the called party The record reflects that the user of [such] services intends to make a single call terminating not at a [carrier’s] intermediate switch, where the 800 leg of the call’s journey ends, but at the telephone line of the called party.⁸

⁷ *Long Distance/USA, Inc. v. Bell Telephone Company of Pennsylvania*, 10 FCC Rcd. 1634 (1995).

⁸ *Id.* at 1638.

[29] Any rules adopted by the Commission must clearly state that payphone service providers are not eligible for compensation for calls which are not completed, i.e. that are not answered at the terminating location. Long-standing Commission policy has conditioned customers not to expect to pay for uncompleted calls. Mandating payphone compensation for unanswered calls will no doubt confuse consumers and result in higher costs to callers, either in the form of higher rates or a specific payphone charge for uncompleted calls. Such a result is contrary to prior Commission policy, and the Notice's goal of reducing transaction costs.

3. Specific Compensation Mechanisms

[24-26] The Commission notes that industry participants have made two proposals which may satisfy the Act's payphone compensation requirement.⁹ One approach -- the "set use fee" -- would require an IXC, (or possibly a LEC, in the case of 0+/0- intraLATA toll) to bill and collect a fee from the end user. The fee would then be remitted to the PSO. In the case of a subscriber 800 number, the fee would be collected from the 800 subscriber and remitted to the PSO. The Notice tentatively concludes that this mechanism would impose undue burdens and costs on both the caller and the industry.¹⁰

[28] In the alternative, the Commission tentatively concludes that it should adopt a carrier-pays mechanism which builds upon existing procedures.¹¹ As proposed in the Notice, any carrier who receives a "dial-around" call from a payphone would be required

⁹ Notice at ¶24.

¹⁰ Id. at ¶28.

¹¹ Id.

to pay a per-call charge to the provider of the payphone. Each carrier can then decide how to recover this additional cost of doing business. The Commission states that the carrier-pays mechanism will result in lower transaction costs because an IXC will be able to aggregate its payments to payphone providers.

[28] CWI believes that, while a carrier-pays mechanism may result in lower transaction costs than would the imposition of a set-use fee, the mechanics of the compensation mechanism described in the Notice are fundamentally flawed, and will result in significant economic and administrative burdens on all carriers. Indeed, CWI believes that many smaller carriers will never be able to implement the procedures necessary to correctly monitor and remit payment to PSOs. Moreover, the Commission's belief that carriers can accurately track these calls is based on the mistaken assumption that all payphone calls carry the 07 information digits. As CWI demonstrates below, implementation of the Commission's envisioned administration is not cost effective, and should not be adopted.

[34] As proposed in the Notice, all intraLATA carriers¹² would send to all interexchange carriers (approximately 500) a list of payphone ANIs each quarter. Carriers would then be required to identify any completed calls originating at these ANIs, calculate payment based on the Commission's adopted amount, and remit payment -- on a quarterly basis -- to the payphone owner. In theory, this system may sound simple. However, because there are no existing relationships between most payphone owners and most interexchange carriers, carriers will be forced to design and implement totally new systems

¹² CWI believes that the Commission mistakenly referred to the LECs as intraLATA carriers in ¶34.

to perform these administrative functions. Even for a carrier the size of CWI, which was ranked by the FCC as the nation's sixth largest interexchange carrier, the costs of such a system are almost prohibitive.

[34] To implement the system proposed in the Notice, CWI would need to develop a report which can search all of its call records--which average over 4 million per day--to identify and separate out calls originating at the 1.85 million¹³ ANIs associated with payphones. Such a new report would require significant changes in CWI's current systems, and would necessitate the development of a new computer program to implement the report. Developing such a program will result in significant expenditures in computer programming time, and will result in various systems being taken "off-line" in order to ensure that the new report properly interacts with other reporting requirements.

[33-34] Once the list of the payphone ANIs are collected in a single report, these ANI's would need to be matched to the actual payphone owner to determine how and where payment should be remitted. This would require CWI to build a database containing the names and addresses of all payphone owners, and develop a report to match each ANI with its owner. Because CWI does not have the necessary computer expertise within the company, it would have to hire outside consultants to design and build these new systems. Based on preliminary estimates from outside consultants, CWI believes that it would spend close to \$1 million to build and implement the systems necessary to accomplish the FCC's objectives. Additionally, once the system is in place,

¹³ Notice at ¶6.

the company would incur significant administrative costs simply to maintain the system and to produce the quarterly updates received by the LECs.

[33-34] Overall, it would impose significant administrative and financial burdens on a company the size of CWI to spend \$1 million to develop and implement systems whose sole purpose is to ensure fair compensation for payphone owners. Moreover, for the hundreds of smaller interexchange carriers, an expenditure of this size is practically impossible.

[33-34] Additionally, the system proposed by the Commission is replete with opportunity for fraudulent behavior. While the system would require LECs to notify carriers of all PSOs, the Commission does not provide any way for the IXC's or LECs to verify that the ANIs identified are actually connected to a payphone. Payphone owners do not register with the FCC nor with all of the state PUCs. And, while the Commission places significant reliance on the ability of interexchange carriers to identify payphones by the "07" information digit, CWI is unsure of whether a payphone connected to a business line (rather than a COCOT line) would pass the 07 information digit on all originating calls.¹⁴

[32-34] CWI believes that there may be another system which would ensure that payphone owners receive compensation under the statute, while placing fewer burdens on interexchange carriers and payphone owners. Briefly stated, CWI believes that local exchange carriers should bill IXC's for all PSO compensation as part of the CABS bill, and

¹⁴ Perhaps the FCC should mandate that all payphones must be connected to a COCOT line.

then remit payment to the payphone owner, possibly as a credit against local service usage. LEC-billed payphone compensation has numerous benefits such as reducing transaction costs, and truly does take advantage of existing procedures.

[32-34] First, all of the required billing relationships currently exist. LECs remit bills, on a monthly basis, to all interexchange carriers who purchase access service.¹⁵ For carriers such as CWI, these bills are typically sent by the larger LECs via electronic file transfer known Network Data Mover ("NDM"). LECs also have a relationship with each payphone owner in their area, because the payphone owner purchases local service and receives a monthly bill from the LEC. And, because 1.5 of the 1.85 million payphones already belong to the LECs,¹⁶ such a system would suit the LECs' needs as well.

[32-34] Additionally, LEC bills would be easier to audit. As stated above, most larger LECs send CABS bills to CWI via NDM. Most larger IXC already have computerized systems in place which can process these bills and match them with calls placed over the network. Because these programs exist, carriers would incur significantly less cost to modify existing systems in order to audit payphone calls. Also, IXCs already have in place the mechanisms necessary to remit payment, because they currently pay LECs on a monthly basis for their access charges.

[32] Finally, a LEC-billed mechanism would evenly spread out the costs incurred by payphone compensation among all parties receiving benefit from of dial around -- the

¹⁵ These bills are also referred to as CABS -- Carrier Access Billing.

¹⁶ Notice at ¶6.

IXCs, PPOs, and the LECs. Because the LECs receive access payments (on a per minute basis) on all calls originating at payphones,¹⁷ they receive a benefit from dial-around calls as well.

As an alternative to the LEC-billed approach, each PSO could render a bill to each IXC which owes it payment. Because compensable calls originate at the payphone owners equipment, these operators, whether a LEC or PPO, are in the best position to render a bill to the appropriate IXC. Each PPO must include appropriate documentation which will allow the IXC to determine if the compensation amount is correct. In addition, CWI proposes that all payphone owners register with the Commission so that IXCs can be assured that the payment remitted actually reflects calls made from a payphone. Without some form of independent verification, the potential for fraudulent activity is substantial.

Any mechanism which requires interexchange carriers to incur the expense of tracking payphone calls is unreasonable. The expense of compensation should be borne by those that benefit from it -- the payphone owners. The compensation mechanism proposed by the Commission places the burden of tracking and payment on everyone but the payphone owner.

III. CONCLUSION

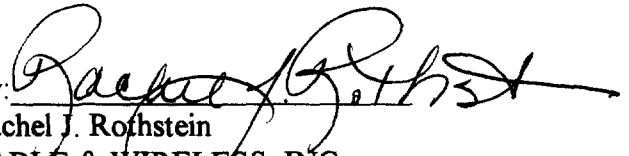
CWI agrees with the Commission's conclusion that those who benefit from calls made from payphones should share in the cost of payphone compensation. However, the

¹⁷ The LECs receive access payments regardless of whether the call is completed. In other words, the LECs receive revenue even when IXCs and PSOs do not.

mechanism proposed by the Commission places all the costs on one party -- the interexchange carrier. Moreover, the Commission fails to include calls carried by the local exchange carrier -- such as intraLATA 0+/0- calls -- in its compensation mechanism. Finally, the mechanism lacks details on how to determine when a call is actually completed. The Commission must remedy these issues before any compensation plan is enacted.

Respectfully submitted,

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